IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 5899 of 2007(B)

OS.166/2004 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER:

SAJAN JOSEPH,
S/O.JOSEPH, AGED 32 YEARS, THUDIYAMPARAMBIL HOUSE,
MULAKKULAM NORTH KARA, PIRAVOM VILLAGE,
MUVATTUPUZHA.

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENTS:

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1. K.P.ALIAMMA, D/O.KURIAN, AGED 49 YEARS,
PALLITHAZHATHU HOUSE, MULAKKULAM NORTH KARA,
PIRAVOM VILLAGE, MUVATTUPUZHA TALUK.

2. ELAMMA, D/O.KURIAN, AGED 75 YEARS,
PALLITHAZHATHU HOUSE, MULAKKULAM NORTH KARA,
PIRAVOM VILLAGE, MUVATTUPUZHA TALUK.

BY ADV. SRI.A.T.ANILKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE DOCUMENT NO: 2469/1969 OF KOOTHATTUKULAM SRO DT.29.5.1969

EXT.P2: -DO- OF THE PLAINT O.S.166/2004 ON THE MUNSIFF COURT, MUVATTUPUZHA

EXT.P3: -DO- OF COMMISSION REPORT AND SKETCH DT.4.5.2004

EXT.P4: -DO- OF THE WRITTEN STATEMENT WITH COUNTER CLAIM DT.1.9.2004

EXT.P5: -DO- OF COMMISSION REPORT AND SKETCH DT. 28.8.2004

EXT.P6: -DO- OF THE PETITION TO SET ASIDE THE COMMISSION REPORT DT.2.1.06

EXT.P7: -DO- OF THE COMMISSION REPORT AND SKETCH DT. 18.10.2006

EXT.P8: -DO- OF THE PETITION AS I.A.4153/2006 TO SET ASIDE THE COMMISSION REPORT DT. 8.11.06

EXT.P9: -DO- OF THE ORDER DT.27.1.2007 IN I.A.4153/2006 IN O.S.166/04 OF THE MUNSIFF COURT, MUVATTUPUZHA

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 5899 OF 2007 B

Dated this the 23rd July, 2007.

JUDGMENT

This writ petition is filed challenging the order in I.A.4153/06 in O.S.166/04. The second plaintiff is the writ petitioner before the court. The court below in an application to set aside the commissioner's plan and report after considering the various materials remitted back the commissioner's report Exts.C1 and C1(a) to cure the defects with respect to the western boundary of the plaint A schedule property and scale. Now the plaintiff may win or loose his case basing upon the property identification with respect to Ext.P2 which is his title document of 1969. The property comprised in re-survey No: 595/2A having an extent of 30 cents is the plaint schedule property. There is description given in the document regarding that property. So, if an attempt is made to locate the property with reference to the descriptions and if possible, with respect to one of the boundaries which is not changed then a better picture will be gatherable and available for the court to correctly fix the identity of the property under the 1969 document. The plaintiff will be bound if such identification is properly done. So, over and above the purpose for which the commission is remitted, I direct the

court below to direct the commissioner also to locate the property with respect to the descriptions and boundaries and survey number shown in the 1969 document. The commissioner with the assistance of the Taluk Surveyor may look into the description in detail and the unchanged boundaries in the 1969 document so it can form a basis for properly locating the 30 cents of the property which is taken in, in a large extent of more than 4 acres of land. After such attempt is made the same commissioner shall submit a fresh plan and report and the parties be permitted to file objections, if any, on the same and the matter be disposed of in accordance with law. The measurement that may be available on the plot may also be given. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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